

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

IN RE: JOHNSON & JOHNSON	:	Civil Action No. 3:16-md-2738-FLW-
TALCUM POWDER PRODUCTS	:	LHG
MARKETING, SALES PRACTICES	:	
AND PRODUCTS LIABILITY	:	
LITIGATION	:	MDL No. 2738
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	:	
	:	
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**STATUS REPORT AND PROPOSED JOINT AGENDA  
FOR JUNE 27, 2019 STATUS CONFERENCE**

**I. DAUBERT HEARING**

The parties will be prepared to further discuss the logistics of the upcoming *Daubert* hearing.

The parties have met and conferred and are attempting to reach agreement on the order of witnesses. We will either present an agreed upon schedule on Thursday or separate schedules for the Court's consideration.

**II. HEALTH CANADA**

**Plaintiffs' Position:**

Following the issuance of the Talc Screening Assessment and the comment period, representatives of talc manufacturers and the Canadian cosmetic trade association requested to meet with Heath Canada. That meeting occurred on April 24, 2019. Through its affiliates, industry trade groups and employees, it is believed that J&J and its agents participated and had input into this meeting and its aftermath. Previously, J&J agreed to produce all documents relating to the Heath Canada proceedings. The PSC requested that J&J supplement that production within the next 3 weeks.

### **Defendants' Position:**

The J&J defendants have already supplemented their document production three times this year (including most recently in April) in response to plaintiffs' requests for documents pertaining to Health Canada, and object to plaintiffs' continued requests for real-time discovery of documents, particularly at this stage of the proceeding. Nevertheless, and without waiving its objection to future similar requests, the J&J defendants will agree to an additional production and will follow up with plaintiffs as to an appropriate scope and timing after it has an opportunity to investigate the issues plaintiffs have raised. Defendants request that in return, Plaintiffs update their Health Canada production.

There is no evidence that Personal Care Products Council had any communications with Health Canada regarding talc.

### **III. STATUS OF FILING OF SHORT FORM COMPLAINTS**

There are 68 cases where Plaintiffs who were previously part of a multi-plaintiff complaint have filed short form complaints in this MDL proceeding but have not complied with CMO 8 in serving the short form complaint on Defendants. *See* CMO 8, ¶¶ 1 and 5 (requiring plaintiffs to file short form complaints pursuant to CMO 2 and to serve these complaints pursuant to CMO 3); *see also* CMO 3, ¶¶ 3 and 4 (ECF notice constitutes service if the original service of process was proper or requiring service of process where the original complaint was not properly served).

There are also 941 plaintiffs from multi-plaintiff cases pending in the MDL who have not filed individual Short Form Complaints. In 10 cases involving approximately 611 plaintiffs, motions to remand are pending and the filing of a Short Form Complaint is not appropriate at this time. Of the remaining 330 who have not refiled an individual single plaintiff case in the MDL, 145 have refiled in non-MDL jurisdictions (the majority of these plaintiffs have re-filed in California and New Jersey per an agreement between Defendants and the PSC), and in 111 cases the parties are conferring to determine if a short form complaint has been filed and, if not, the reason why and what the appropriate next steps are in these cases. We would ask that the court afford the plaintiffs adequate time to determine the status of the filings.

#### IV. DUPLICATE FILED CASES

The parties are working to resolve the few remaining duplicate filed cases and would like to request the Court's assistance in dealing with duplicate filed cases that cannot be resolved with the assistance of the Plaintiffs' Steering Committee.

#### V. REPORT ON FEDERAL DOCKET

As of June 14, 2019:

- A. There are currently 11,272 cases pending in the MDL in which the Johnson & Johnson Defendants have been served or in which Plaintiffs from multi-plaintiff cases pending in the MDL have filed Short Form Complaints on individual dockets and have not served the Johnson & Johnson Defendants (and have opened case numbers), totaling 12,176 Plaintiffs (including 902 Plaintiffs in 45 multi-plaintiff cases removed from Missouri state court that have not filed Short Form Complaints on individual dockets, 11 Plaintiffs in *Harders* removed from Illinois state court that have not filed Short Form Complaints on individual dockets, 2 Plaintiffs in *Lovato* removed from New Mexico state court that have not filed Short Form Complaints on individual dockets, 1 Plaintiff in *Robb* removed from Oklahoma state court that has not filed Short Form Complaints on individual dockets, 1 Plaintiff from the *Crenshaw* case from the Middle District of Georgia that have not filed Short Form Complaints on individual dockets, and 24 Plaintiffs from the *Flores-Rodriguez* case from the District of Puerto Rico).

Individual Plaintiffs in the multi-plaintiff cases are in the process of filing Short Form Complaints on individual dockets. Thus far, all of the individual Plaintiffs in the following multi-plaintiff cases have filed Short Form Complaints on individual dockets: *Karen Glenn, et al.* and *Mary Rea, et al.* (one *Rea* Plaintiff, Exia Monroe, a New Jersey resident, has re-filed in New Jersey state court). Additionally, all of the individual Plaintiffs in the *Charmel Rice, et al.* and *Lillie Lewis, et al.* multi-plaintiff cases have filed Short Form Complaints on individual dockets, except individual Plaintiffs Charmel Rice and Lillie Lewis.

There are seven Plaintiffs named as the lead Plaintiffs in multi-plaintiff cases who did not refile Short Form Complaints on individual dockets, but filed a Short Form Complaint in their corresponding multi-plaintiff case dockets. These include the lead Plaintiffs from four multi-plaintiff cases removed from Missouri state court (*Brenda Anderson, et al.*, *Lillie Lewis, et al.*, *Charmel Rice, et al.*, and *Jerie Rhode, et al.*), Marie Robb in the *Robb* case removed from Oklahoma State, and Deborah Crenshaw from the *Crenshaw* case originally filed in the Middle District of Georgia, and Samary Flores-Rodriguez in the *Flores-Rodriguez* case transferred from the District of Puerto Rico.

- B.** There is currently one multi-plaintiff case removed from Missouri state court and pending in the Eastern District of Missouri, discussed below, that the JPML has not yet transferred into the MDL totaling 2 plaintiffs). Motions to dismiss and a motion to remand have been filed in this case. The case pending in the Eastern District of Missouri is listed below along with the judge to whom they are presently assigned.

**Judge Ronnie L. White**

Bathon, Rebecca, et al. v. Johnson & Johnson, et al. Case No. 4:19-cv-000923-RLW

- C.** There are a handful of single-plaintiff cases that have been on CTOs and will be transferred in the near future to the MDL. These cases would not greatly affect the number of cases pending in the MDL absent the plaintiffs in the multi-plaintiff cases.

## **VI. REPORT ON STATE COURT DOCKET**

In light of the Imerys bankruptcy, J&J filed a motion under 28 U.S.C. §§ 157(b)(5) and 1334(b), to fix venue for personal injury and wrongful death claims against J&J in the U.S. District Court for the District of Delaware-the district court where Imerys's bankruptcy is pending. The motion affects claims in approximately 2400 state court actions around the country, including the ovarian cancer claims and the mesothelioma claims. In connection with this motion, J&J has and continues to remove the claims pending in state court to federal court under 28 U.S.C. § 1452.

### **Plaintiffs' Position:**

Individual Plaintiffs as well as the Tort Claimants' Committee have filed oppositions to J&J's motion to fix venue in the U.S. District Court for the District of Delaware. In addition, Plaintiffs have filed hundreds of motions to remand in response to the removed claims. Plaintiffs have uniformly argued that plaintiffs' claims are not "related to" the pending bankruptcy proceeding filed by Imerys in Delaware. The claims that Johnson & Johnson point to as a basis for federal jurisdiction are separate and distinct from plaintiffs' claims against Johnson & Johnson. *See In re Fed.-Mogul Glob., Inc.*, 300 F.3d 368 (3d Cir. 2002). Moreover, Plaintiffs argue 28 U.S.C. § 1334(c)(2) requires remand, as plaintiffs' state court claims: (1) do not arise under the bankruptcy code; (2) are exclusively based on state law; (3) are not subject to federal jurisdiction absent their purported relation to Imerys' bankruptcy; and (4) can be timely adjudicated in the state court.

District courts in 16 states have agreed with Plaintiffs' arguments. To date, 16 District Courts have remanded approximately **409** cases, including this Court who issued a decision in the *Etheridge, Barden, McNeil-George*, and *Ronning* cases on June 18, 2019. No request for remand have been denied.

### **Defendants' Position:**

However, some courts have granted J&J's request to hold the remand motions in abeyance until the District of Delaware's forthcoming decision. No court has held, as Plaintiffs argue, that mandatory abstention applies.

The presently scheduled trials in ovarian cancer cases are:

- *Diane Doty and Gerald Doty v. Johnson & Johnson, et al.* is scheduled for July 2020 in McLean County, Illinois before Judge Rebecca Foley.
- *Ellen Kleiner and Yury Kleiner, w/h v. Rite Aid Corp., at al.* is scheduled for January 6, 2020 in Philadelphia County, Pennsylvania.

In Delaware, the Venue Motion has been fully briefed since June 4, 2019. Oral argument is expected to be ordered shortly, and thereafter a decision will be forthcoming.

New Jersey state court appeals remain with the Appellate Division awaiting a date for oral argument.

## VII. STATUS OF PENDING MOTIONS

- A. The list of motions pending in individual cases is attached hereto as Exhibit A.
- B. On July 14, 2017, the Court issued a dismissal of the *Estrada* Consumer Class case, finding that Estrada did not allege an injury in fact. ECF Nos. 50, 51. The Court dismissed and entered judgment in Estrada's lawsuit on August 10, 2017. ECF No. 53. Estrada has appealed this decision. On September 6, 2018, a panel of the Third Circuit Court of Appeals affirmed the Court's decision. Estrada filed a petition for rehearing *en banc* on September 20, 2018, which was denied on October 3, 2018.
- C. On May 6, 2019, defendant Personal Care Products Council filed a motion for summary judgment. The Court has stayed briefing of Plaintiffs' response to Personal Care Products Council's motion for summary judgment.

Respectfully submitted,

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**EXHIBIT A****STATUS OF PENDING MOTIONS IN INDIVIDUAL CASES**

<b>Case Name</b>	<b>Case No.</b>	<b>Status of Pending Motions</b>
<i>Gavin, Sherron, et al. v. Johnson &amp; Johnson, et al.</i>	3:18-cv-10319	Plaintiffs' Motion to Remand filed September 26, 2018. Fully Briefed.  Imerys' Motion to Dismiss filed October 26, 2018. Fully briefed.
<i>Edna Brown v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05724	Plaintiffs' Motion to Remand filed September 1, 2017. Fully briefed.  Imerys' Motion to Dismiss filed 9/5/17. Fully briefed
<i>Carolyn Bennett v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05723	Plaintiffs' Motion to Remand filed September 1, 2017. Fully briefed.  Imerys' Motion to Dismiss filed 9/5/17. Fully briefed
<i>Maureen Abbeduto, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05812	Plaintiffs' Motion to Remand filed September 1, 2017. Fully briefed.  Imerys' Motion to Dismiss filed 9/5/17. Fully briefed.
<i>Kim Knight v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05796	Plaintiffs' Motion to Remand filed September 1, 2017. Fully briefed.  Imerys' Motion to Dismiss filed 9/5/17. Fully briefed
<i>Sharon McBee, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-5720	Johnson & Johnson Defendants' Motion to Dismiss filed September 5, 2017. Motion to be terminated pursuant to CMO 8.  Imerys' Motion to Dismiss filed 9/5/17. Fully briefed 10/13/17. Motion to be terminated pursuant to CMO 8.



<b>Case Name</b>	<b>Case No.</b>	<b>Status of Pending Motions</b>
<i>Donna McNichols, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-5719	Johnson & Johnson Defendants' Motion to Dismiss filed September 5, 2017. Motion to be terminated pursuant to CMO 8.  Imerys' Motion to Dismiss filed 9/5/17. Fully briefed 10/13/17. Motion to be terminated pursuant to CMO 8.
<i>Rebecca Bowers v. Johnson &amp; Johnson, et al.</i>	3:17-cv-12308	Plaintiffs' Motion to Remand filed December 4, 2017. Fully briefed.
<i>Peck, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-12665	Plaintiffs' Motion to Remand filed January 11, 2018. Johnson & Johnson Defendants' Opposition filed January 22, 2018. Defendant Imerys' Opposition filed February 7, 2018.  Imerys' Motion to Dismiss filed November 8, 2017. Fully briefed.
<i>Anderson, et al. v. Johnson &amp; Johnson, et al.</i>	3:17-cv-2943	Plaintiff's Motion for Voluntary Dismissal without prejudice filed February 15, 2018. Fully briefed. 2018.
<i>Chathapana, Davahn v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05853	Imerys' Motion to Dismiss filed 9/5/17. No opposition filed. Motion to be terminated pursuant to CMO 8.
<i>Femminella, Joan v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05860	Imerys' Motion to Dismiss filed 9/5/17. No opposition filed. Motion to be terminated pursuant to CMO 8.
<i>Guptill, Mary v. Johnson &amp; Johnson, et al.</i>	3:17-cv-05869	Imerys' Motion to Dismiss filed 9/5/17. No opposition filed. Motion to be terminated pursuant to CMO 8.
<i>Dawn Hannah v. Johnson &amp; Johnson, et al.</i>	3:18-cv-01422	Plaintiff's Motion to Remand filed March 5, 2018. Fully Briefed.  Imerys' Motion to Dismiss filed 4/4/18. Fully briefed.

<b>Case Name</b>	<b>Case No.</b>	<b>Status of Pending Motions</b>
<i>Callahan, Janice v. Johnson &amp; Johnson, et al.</i>	3:18-cv-05557	Plaintiff's Motion to Remand filed May 4, 2018. Fully briefed.  Defendant Imerys' Motion to Dismiss filed October 10, 2018. Fully Briefed.
<i>Smith, Phyllis v. Johnson &amp; Johnson, et al.</i>	3:18-cv-05556	Plaintiff's Motion to Remand filed May 4, 2018. Fully briefed.  Defendant Imerys' Motion to Dismiss filed October 9, 2018. Fully Briefed.
<i>Baker v. Johnson &amp; Johnson, et al.</i>	3:17-cv-07712	Plaintiff's Motion to Remand filed June 8, 2018. Fully briefed.  Defendant Imerys' Motion to Dismiss filed July 9, 2018. No oppositions were filed.  Plaintiffs' Motion to Stay or Strike Defendant Imerys' Motion to Dismiss filed July 17, 2018. Defendant Imerys' Opposition filed July 27, 2017.
<i>Cartwright, Darren v. Johnson &amp; Johnson, et al.</i>	3:18-cv-05535	Plaintiffs' Motion to Remand filed July 25, 2018. Fully briefed.  Defendant Imerys' Motion to Dismiss filed August 24, 2018. Fully Briefed.
<i>Kassimali, Maureen, et al. v. Johnson &amp; Johnson, et al.</i>	3:18-cv-05534	Plaintiffs' Motion to Remand filed July 25, 2018. Fully briefed.  Defendant Imerys' Motion to Dismiss filed August 24, 2018. Fully Briefed.
<i>Kehoe, Tracey, et al. v. Johnson &amp; Johnson, et al.</i>	3:18-cv-11509	Plaintiffs' Motion to Remand filed July 26, 2018. Fully briefed.  Defendant Imerys' Motion to Dismiss filed October 23, 2018. Fully Briefed.

<b>Case Name</b>	<b>Case No.</b>	<b>Status of Pending Motions</b>
<i>Jiminez, Sandra, et al. v. Johnson &amp; Johnson, et al.</i>	3:18-cv-12526	Plaintiffs' Motion to Remand filed August 23, 2018. Fully briefed.
<i>Johnson, Amy v. Johnson &amp; Johnson, et al.</i>	3:18-cv-01423	Plaintiffs' Motion to Remand filed September 26, 2018. Fully Briefed.  Imerys' Motion to Dismiss filed October 26, 2018. Fully Briefed.
<i>Reising, Amanda, et al. v. Johnson &amp; Johnson, et al.</i>	3:18-cv-10320	Plaintiffs' Motion to Remand filed September 26, 2018. Fully Briefed.  Imerys' Motion to Dismiss filed October 26, 2018. Fully Briefed.
<i>Gendelman, Robert v. Johnson &amp; Johnson, et al.</i>	3:17-cv-00461	On 11/14/18, Defendant Imerys and Plaintiff submitted joint letter to Judge Wolfson withdrawing Motion to Remand and Motion to Dismiss without prejudice.
<i>Aikens, Chelsea v. Johnson &amp; Johnson, et al.</i>	3:17-cv-12675	Motion to Remand (consolidated under Motion to Remand filed in the Sandra Peck matter filed January 11, 2018. Defendant Johnson & Johnson's Opposition filed January 22, 2018. Imerys' Opposition filed February 7, 2018.  Imerys' Motion to Dismiss filed November 14, 2018. Fully Briefed.
<i>Comardelle, Pamela v. Johnson &amp; Johnson, et al.</i>	3:17-cv-13365	Motion to Remand (consolidated under Motion to Remand filed in the Sandra Peck matter filed January 11, 2018. Defendant Johnson & Johnson's Opposition filed January 22, 2018. Imerys' Opposition filed February 7, 2018.  Imerys' Motion to Dismiss filed November 12, 2018. Fully Briefed.

<b>Case Name</b>	<b>Case No.</b>	<b>Status of Pending Motions</b>
<i>Gibson, Cynthia v. Johnson &amp; Johnson, et al.</i>	3:18-cv-14637	Plaintiffs' Motion to Remand filed November 1, 2018. Fully Briefed.  Imerys' Motion to Dismiss filed December 3, 2018. Fully briefed.
<i>Lightfoot, Brandy v. Johnson &amp; Johnson, et al.</i>	3:17-cv-13361	Motion to Remand (consolidated under Motion to Remand filed in the Sandra Peck matter filed January 11, 2018. Defendant Johnson & Johnson's Opposition filed January 22, 2018. Imerys' Opposition filed February 7, 2018.  Imerys' Motion to Dismiss filed November 13, 2018. Fully Briefed.
<i>Mouton, Geneva v. Johnson &amp; Johnson, et al.</i>	3:17-cv-12674	Motion to Remand (consolidated under Motion to Remand filed in the Sandra Peck matter filed January 11, 2018. Defendant Johnson & Johnson's Opposition filed January 22, 2018. Imerys' Opposition filed February 7, 2018.  Imerys' Motion to Dismiss filed November 13, 2018. Fully Briefed.
<i>Sansome, Kristina v. Johnson &amp; Johnson, et al.</i>	3:17-cv-12673	Motion to Remand (consolidated under Motion to Remand filed in the Sandra Peck matter) filed January 11, 2018. Defendant Johnson & Johnson's Opposition filed January 22, 2018. Imerys' Opposition filed February 7, 2018.  Imerys' Motion to Dismiss filed November 15, 2018. Fully Briefed.
<i>Hittler, Lisa v. Johnson &amp; Johnson, et al.</i>	3:18-cv-17106	Motion to Remand filed January 7, 2019. Fully briefed.
<i>Barsh, Eleanor v. Johnson &amp; Johnson, et al.</i>	3:18-cv-01464	Renewed Motion to Remand filed January 9, 2019. Oppositions filed February 6, 2019.

<b>Case Name</b>	<b>Case No.</b>	<b>Status of Pending Motions</b>
<i>Benford, Tashay, et al. v. Johnson &amp; Johnson, et al.</i>	3:19-cv-5590	Motion to Remand filed March 8, 2019. J&J Defendants' opposition filed April 10, 2019.
<i>McConnell, Laura, et al. v. Johnson &amp; Johnson, et al.</i>	3:19-cv-09365	Motion to Remand filed May 2, 2019. Fully briefed.
<i>Johnson, Amy, et al. v. Johnson &amp; Johnson, et al.</i>	3:18-cv-01423	Motion to Remand filed September 26, 2018. Fully briefed.